IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 156 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHIVABHAI MANSANGBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 156 of 1995

MR KJ SHETHNA for the appellants

MS NANDINI JOSHI, APP for the respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE H.H.MEHTA

Date of decision: 28/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

In this appeal, which is filed under section 374 of the Code of Criminal Procedure, 1973, the appellants have challenged legality of judgment dated December 31, 1994 rendered by the learned Special Judge, Ahmedabad (Rural) in Special Criminal Case No. 140/93, by which the appellants are convicted under sections 3(1)(x) & 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, section 307 read with 34 of the Indian Penal Code and section 506(2) read with section 34 of the Indian Penal Code and punished with imprisonment for life and fine of Rs. 5000/- each i/d. S.I. for 1 year for having committed offence punishable under section 3(1)(x) read with section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as R.I. for 5 years and fine of Rs. 2000/- each i/d. S.I. for 6 months for having committed offence punishable under section 307 read with section 34 of the Indian Penal Code and R.I. for 1 year and fine of Rs. 1000/- each i/d. S.I.for 3 months for having committed offence punishable under section 506(2) read with section 34 of the Indian Penal Code.

2. Injured Ganeshbhai Dahyabhai, his wife Laxmiben Ganeshbhai and complainant Mohanbhai Dahyabhai etc. belong to scheduled castes and are residents of village Vataman, Taluka : Dholka, District : Ahmedabad; whereas the appellants are also residents of village Vataman and belong to higher castes. In village Vataman, there is a junction of four roads known as 'Chakla' where the shop of the appellant no.2 is situated. The incident had taken place on June 8, 1993. On that day, injured Ganeshbhai in company of his wife Laxmiben had gone to the chowk for the purpose of purchasing mangoes. One person belonging to vaghari community was selling mangoes in front of shop of the appellant no.2. An altercation had taken place between the injured and the person selling mangoes regarding price of the mangoes. Therefore, the appellant no.2, who was sitting in his shop, had addressed the injured as 'dheda' and asked him to go home if he was not inclined to purchase mangoes. Thereupon the injured had requested the appellant no.2 not to address him as 'dheda' and therefore, the appellant no.2 had instigated the appellant no.3 who was standing near his shop and asked him to kill the injured by saying that the dheda had become unmanageable and gone astray. At that time, the appellant no.1 was also present in the shop and he had also instigated the appellant no.3 to kill the injured saying that the

appellant no.3 had their backing. On being instigated, the appellant no.3 had rushed to the shop of one Atmaram and after bringing chilli powder, had thrown the same in the eyes of injured Ganeshbhai. As chilli powder was thrown in his eyes, the injured had bent and thereafter the appellant no.3 had caused injuries on his back, neck, head etc. by means of a knife. On sustaining injuries, the injured had fallen down and his wife Laxmiben as well as Natubhai Motibhai Vegda, Dudhabhai Trikambhai, Mohanbhai Dahyabhai etc. had tried to save Ganeshbhai, but the appellants had threatened them and, therefore, they could not rescue injured Ganeshbhai. However, within no time, a crowd had gathered at the place of incident and therefore, all the three appellants had fled the place of incident. As the injured had sustained serious injuries, he was removed to his house, fromwhere he was taken to the residence of Ex.Sarpanch of the village i.e. Bhanubhai Khodabhai Bharvad. Bhanubhai Khodabhai Bharvad had removed the injured to Government Dispensary at Dholka in his jeep. On the way to Dholka dispensary, complainant Mohanbhai Dahyabhai, who was then a member of the Gram Panchayat, had lodged complaint with Mr.B.B.Parmar, who was then P.S.I. Koth Police Station, and thereafter the injured was admitted to V.S.Hospital, Ahmedabad for better treatment.

3. The investigating officer had visited the place of incident and prepared panchnama of place of incident in the presence of panch witnesses. The blood stained clothes of the injured which were produced by the injured were seized during the course of investigation. Further, the statements of those persons who were found to be conversant with the facts of the case were recorded and the appellants no.1 & 2 were arrested on June 9, 1993; whereas the appellant no.3 was arrested on August 25, 1993. While in police custody, the appellant no.3 had shown willingness to point out the place where he had concealed the knife used by him in the commission of the offence and accordingly, the knife was discovered, regarding which panchnama was prepared as required by section 27 of the Evidence Act. On completion of investigation, the appellants were chargesheeted in the Court of learned Special Judge, Ahmedabad (Rural) of the offences punishable under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989 ("the Atrocities Act" for short), section 307 r.w.sec.34 I.P.C. and section 506(2) r.w. sec.34 of I.P.C. The learned Special Judge had framed charge at Exh.4 against the appellants of the offences punishable under section 3(1)(x) of the Atrocities Act, section 307 r.w.sec.34 and section 506(2) r.w.sec.34

I.P.C. The charge was read over and explained to the appellants, who pleaded not guilty to the same and claimed to be tried. The prosecution had, therefore, examined; (1) Ganeshbhai Dahyabhai Vanker,PW.2 Exh.30, (2) Laxmiben Ganeshbhai Vanker,PW.3 Exh.31, (3) Talshibhai Manabhai, PW.4 Exh.32, (4) Devabhai Danabhai, PW.5 Exh.34, (5) Natubhai Motibhai Vegda, PW.6 Exh.36, (6) Mohanbhai Dahyabhai, PW.7 Exh.37, (7) Dudhabhai Trikambhai,PW.8 Exh.38, (8) Bhanubhai Polabhai Bharvad, PW.9 Exh.39, (9) Ibrahimbhai Allabeli Saiyad,PW.10 Exh.40 (10) Ghanshyambhai Nanubhai Rathod, PW.11 Exh.42, (11) Bhanulal Bhojabhai parmar, PW.12 Exh.46, (12) Dr.Jivesh Devakant Chaudhari,PW.13 Exh.48, (13) Trikambhai Shankerdas Patel,PW.14,Exh.50, and (14) Harshad Ayub Yakubkhan Sarvani, PW.15 Exh.51, to prove its case against the appellants. The prosecution had also produced documentary evidence, such as complaint lodged by Mohanbhai at Exh.29, panchnama of place of offence at Exh.33, injury certificate of Ganeshbhai at Exh.49 etc. in support of its case against the appellants.

4. After recording of evidence of prosecution witnesses was over, the learned Judge had explained to the appellants the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statements as required by section 313 of the Code of Criminal Procedure. In their further statements, the appellants had denied the prosecution case. The defence of the appellants no.1 & 2 was that they were not present at the time when the incident had taken place, but were falsely implicated at the instance of Bhanubhai Bharvad, who was their political rival; whereas the defence of the appellant no.3 was that he was neither selling mangoes on the date of the incident, nor had caused any injury to Ganeshbhai. In support of their defence, the appellants no.1 & 2 had examined; (1) Ugabhai Lakhabhai, DW.1 Exh.54, (2) Ranchhodbhai Velabhai DW.2 Exh.55, (3) Vasantlal Nanakbhai,DW.3 Exh.56, (4) Batukbhai, DW.4 Exh.59, (5) Punjabhai Jethabhai, DW.5 Exh.61, (6) Pashabhai Talshibhai, DW.6 Exh.62, and (7) Pomabhai Ratnabhai Parmar,DW.7 Exh.63. In order to establish bad antecedents of Bhanubhai Bharvad, the appellants no.1 & 2 had also produced complaint lodged by one Arunaben regarding her molestation by Bhanubhai. No witness was examined by the appellant no.3 in his defence that he had not caused any injury to Ganeshbhai.

5. On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution that injured Ganeshbhai and his wife Laxmiben were members of scheduled caste. The learned

Judge held that it was proved by the prosecution beyond reasonable doubt that injured Ganeshbhai Dahyabhai was addressed by the appellants no.1 & 2 as 'dheda' and that they had instigated the appellant no.3 to cause injury to Ganeshbhai. The learned Judge further deduced that in furtherance of their common object, the appellants no.1 & 2 had instigated the appellant no.3 to commit murder of Ganeshbhai and that the appellant no.3 had attempted to commit murder of Ganeshbhai by causing serious injuries to him. What was concluded by the learned Judge was that it was proved by the prosecution beyond reasonable doubt that in furtherance of their common object the appellants no.1 & 2 had intentionally insulted and intimidated with intent to humiliate the injured who was a member of a scheduled caste in a place within public view and had, therefore, committed the offence punishable under section 3(1)(x) of the Atrocities Act; whereas the appellant no.3 was liable to be convicted for the said offence with the aid of section 34 of I.P.C. In view of the above referred to conclusions, the learned Judge has convicted the appellants under section 3(1)(x) read with section 3(2)(v) of the Atrocities Act and section 307 r.w.sec.34 I.P.C. and section 506(2) r.w.sec.34 I.P.C. by judgment dated December 31, 1994 and imposed punishments referred to earlier, giving rise to the present appeal.

6. Mr. K.J.Shethna, learned counsel for the appellants submitted that no charge was framed by the learned Special Judge against the appellants of the offence punishable under section 3(2)(v) of the Atrocities Act, nor any finding is recorded by the learned Judge to the effect that the prosecution has satisfactorily proved that the appellants had committed any offence under the Indian Penal Code punishable with imprisonment for a term of 10 years or more against the injured on the ground that the injured was a member of the scheduled caste and, therefore, the conviction of the appellants under section 3(2)(v) as well as punishment imposed therefor are liable to be set aside. After referring to the testimony of the injured as well as that of eye witnesses, the learned counsel submitted that the claim of the injured and others that the injured was assaulted with a knife by the appellant no.3 does not get corroboration from the medical evidence on record and therefore, the appellants are entitled to the reasonable benefit of doubt. The learned counsel for the appellants pleaded that no satisfactory evidence is led by the prosecution to establish that the appellants no.1 & 2 were present at the place of incident or had instigated the appellant no.3 to cause injury to the injured and, therefore, the impugned judgment should be reversed.

What was stressed was that no blood was found from the alleged place of incident, nor the evidence adduced by the prosecution regarding discovery of knife at the instance of the appellant no.3 is reliable and as it is not satisfactorily established by the prosecution that the appellant no.3 had inflicted blows with knife on the injured, the appeal should be accepted.

7. Ms. Nandini Joshi, learned A.P.P. strenuously urged that the evidence of injured regarding injuries caused to him by the appellant no.3 gets corroboration from the evidence of other eye witnesses as well as that of defence witnesses and, therefore, it is not correct to say that satisfactory evidence has not been led by the prosecution to establish charge against the appellant no.3. It was argued that the evidence of the injured as well as that of eye witnesses establishes beyond reasonable doubt that on the date of incident the injured had gone to the chowk for the purpose of purchasing mangoes where he had an altercation with the person who was selling mangoes, regarding price of mangoes, as a result of which the appellant no.2, who was present in his shop, had insulted and humiliated the injured by addressing him as 'dheda' in public view; whereas the appellant no.1 had after addressing the injured as 'dheda' instigated the appellant no.3 to kill the injured and, therefore, the conviction of the appellants under section 3(1)(x) of the Atrocities Act read with section 34 I.P.C. cannot be regarded as illegal. According to the learned A.P.P., medical evidence on record shows that the injuries sustained by the injured at the hands of the appellant no.3 were serious and could have caused his death and, therefore, conviction of the appellants under section 307 r.w.section 34 I.P.C. should be upheld by the Court. What was maintained by the learned A.P.P. was that absence of charge under section 3(2)(v) of the Atrocities Act has not occasioned failure of justice to the appellants and in view of cogent evidence led by the prosecution, which establishes ingredients of offence punishable under section 3(2)(v) of the Atrocities Act, the conviction of the appellants for the same as well as punishment of life imprisonment should be upheld by the Court.

8. We have heard the learned counsel for the parties and reappreciated the whole evidence on record. It is an admitted position that the learned Special Judge had not framed any charge against any of the appellants of the offence punishable under section 3(2)(v) of the Atrocities Act. Section 3(2)(v) of the Atrocities Act provides that whoever, not being a member of a scheduled

caste or a scheduled tribe, commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a scheduled caste or a scheduled tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. As explained by the Supreme Court in Masumsha Hasansha Musalman v. State of Maharashtra, AIR 2000 SC 1876, the prosecution has to lead positive evidence to the effect that the accused has committed the offence alleged against him on the ground that the victim is a member of a scheduled caste or a scheduled tribe. What is highlighted by the Supreme Court in the said decision is that to attract the provisions of section 3(2)(v) of the Act, the sine qua non is that the victim should be a person, who belongs to a scheduled caste or a scheduled tribe and that the offence under the Indian Penal Code is committed against him on the basis that such a person belongs to a scheduled caste or a scheduled tribe. Having regard to the principles laid down by the Supreme Court in the above quoted decision as well as the provisions of section 3(2)(v) of the Atrocities Act, there is no manner of doubt that the offence contemplated by section 3(2)(v) is a distinct and separate offence from the one contemplated by section 3(1)(x) of the Atrocities Act regarding which different punishment is prescribed. Under the circumstances, we are of the opinion that it was incumbent upon the learned Special Judge to frame charge against the appellants of the offence punishable under section 3(2)(v) of the Atrocities Act and give them sufficient opportunity to defend the said charge. However, as observed earlier, no charge at all was framed by the learned Special Judge against any of the appellants of the offence punishable under section 3(2)(v) of the Atrocities Act. Further, on appreciation of evidence, the learned Judge has drawn conclusions against the appellants which are to be found in paragraphs 37 to 40 of the impugned judgment. The learned Judge has held that it is proved by the prosecution beyond reasonable doubt that the appellants have committed offences punishable under section 3(1)(x) of the Atrocities Act and section 307 r.w.sec.34 and section 506(2) r.w.sec. 34 of the Indian Penal Code, but has not concluded that it is proved by the prosecution beyond reasonable doubt that the appellants have committed offence punishable under section 3(2)(v) of the Atrocities Act. Under the circumstances, we fail to understand as to how the appellants could have been convicted under section 3(2)(v) of the Atrocities Act and punished with life imprisonment. The submission advanced by the learned A.P.P. on the basis of section 464 of the

Code of Criminal Procedure, 1973 is of no avail to the prosecution. It is true that section 464 of the Code takes into its sweep absence of charge, but what is relevant for the Court to consider is whether the absence of charge has caused failure of justice to the appellants. We may state that the offence under section 3(1)(x) of the Atrocities Act is punishable with imprisonment upto five years; whereas the minimum punishment prescribed for the offence punishable under section 3(2)(v) is life imprisonment. Thus, the prejudice caused to the appellants and failure of justice occasioned are writ large. The courses to be adopted by the Court of appeal on forming opinion that failure of justice, in fact, has been occasioned, are enumerated in sub-section(2) of section 464 of the Code. However, the facts of the case are such that no valid charge could be preferred against the appellants of the offence punishable under section 3(2)(v) of the Atrocities Act and, therefore, the conviction of the appellants of the offence punishable under section 3(2)(v) of the Atrocities Act is liable to be quashed.

9. This brings us to the consideration of question whether the appellants could have been convicted under section 3(1)(x) of the Atrocities Act, section 307 r.w. section 34 I.P.C. and section 506(2) r.w.section 34 I.P.C. In this regard, injured Ganeshbhai has stated in his deposition before the Court that when he had gone to purchase mangoes in company of his wife, he had an altercation with the person, who was selling mangoes, regarding price of mangoes and the appellant no.2, who was present in his shop, had addressed him as 'dheda' and asked him to go home if he was not inclined to purchase mangoes. It is also stated by the injured that when he had requested the appellant no.2 that he should not address him as dheda, the appellant no.2 was annoyed and the appellant no.1, who was also present in the shop of appellant no.2, had asked the appellant no.3 to kill the injured saying that the dhedas had become unmanageable and had gone astray. What is claimed by the injured in his testimony is that thereafter the appellant no.3 had gone to the shop of one Atmarambhai and after bringing chilli powder had thrown the same in his eyes, as a result of which, he had bent and thereafter the appellant no.3 had inflicted blows with knife on his back, neck, head etc. Laxmiben, who is wife of injured Ganeshbhai, has repeated what is stated by Ganeshbhai in his substantive evidence before the Court. The other eye witnesses have also narrated the same story as is narrated by the injured and his wife, except witness Natubhai Vegda, PW.6 Exh.36, who has stated that the

appellant no.2 had also instigated the appellant no.3 to kill injured Ganeshbhai. However, the claim made by the injured and other witnesses that the appellant no.3 had caused injuries with knife on different parts of the person of the injured needs to be appreciated in the light of medical evidence on record. Dr. Jivesh Chaudhary, PW.13 Exh.48, has stated in his substantive evidence before the Court that on June 8, 1993 he was discharging duties as Registrar, Cardiology Department of V.S.Hospital and that at about 12.40 hours Ganeshbhai was brought before him and that he had examined him. The doctor has stated before the Court that the injured had given history of assault by sharp cutting instrument and that he had noticed that the injured had sustained in all six injuries. The injuries sustained by the injured are mentioned in detail in Exh.49, which is the certificate issued by Dr. Chaudhary after examining the injured. The injuries mentioned in the said certificate are as under:-

(1) C.L.W. at back of right shoulder 8 cm x 4 cm deep to muscle.
(2) C.L.W. Medial end of right scapula 2 cm x 1 cm muscle deep.

(3) C.L.W. right axilla 2 cm x 1 cm. muscle deep
(4) C.L.W. left posterior abdominal over illiac bone 8 cm x 1 cm bone deep.
(5) C.L.W. scalp (i) 5 cm x 1 cm. bone deep occipital region, and (ii) 3 cm x 1 cm bone deep posterior to neck.

It was deposed by the doctor that Injuries no.1,2 & 3 sustained by the injured were serious and were likely to cause death of the injured. During the course of tendering evidence before the Court, the doctor was shown muddamal knife which was allegedly discovered pursuant to the voluntary disclosure made by the appellant no.3 and the doctor had opined that the injuries sustained by the injured were possible by the said knife. It was further stated by the doctor that the injured was admitted in the hospital on June 15, 1993 and was discharged on June 22, 1993. In cross-examination by the learned counsel for the appellant no.3, it was stated by the doctor that if immediate treatment had not been given, the injured could have died.

10. From the evidence of the doctor and the contents of injury certificate, it is evident that the injured had sustained all contused lacerated wounds. If sharp

cutting instrument like muddamal knife had been used, then in the ordinary course of nature the injured would have sustained incised wounds and not contused lacerated wounds. Normally speaking , contused lacerated wounds would be produced if hard and blunt substance is used while causing injuries to an injured. Under the circumstances, the claim made by the doctor before the Court that the contused lacerated wounds which he had found while examining the injured were possible by a sharp cutting instrument like knife, cannot be accepted. In Mohd. Zahid v. State of Tamil Nadu, AIR 1999 SC 2416, the Supreme Court has, inter-alia, made following pertinent observations in Para-24 of the reported judgment :

> "We are aware of the fact that sufficient weightage should be given to the evidence of the doctor who has conducted the post-mortem, as compared to the statements found in the text books, but giving weightage does not ipso facto mean that each and every statement made by a medical witness should be accepted on its face value even when it is self-contradictory".

Applying the principles laid down by the Supreme Court to the facts of the present case, we find that if the sharp cutting instrument like muddamal knife had been used as is claimed by the injured and other witnesses, the injured would not have sustained contused lacerated wounds, but would have sustained incised wounds. The statement made by Dr. Chaudhary is self-contradictory because what he had found while examining the injured was that the injured had sustained contused lacerated wounds; whereas he maintains before the Court that contused lacerated wounds were possible by sharp cutting instrument like knife. Therefore, even after giving due weightage to the evidence of Dr. Chaudhary, we are of the opinion that his claim that the injured had sustained contused lacerated wounds by muddamal knife, cannot be accepted. As observed earlier, the evidence of the injured as well as that of other witnesses would show that the appellant no.3 had used sharp cutting instrument like knife, but the doctor has found that the injured had sustained contused lacerated wounds. Under the circumstances, a serious doubt arises as to whether, in fact, the appellant no.3 had assaulted the injured with a sharp cutting instrument like muddamal knife. Further, the claim of the injured that the appellant no.3 before assaulting him with knife had entered the shop of one Atmarambhai and after bringing chilli powder had thrown the same in his eyes is highly doubtful. The injured in

his evidence has not stated that he had removed the chilli powder which had entered his eyes by washing the eyes. While narrating the history of assault before Dr. Chaudhary, the injured had not stated that first of all chilli powder was thrown into his eyes and thereafter the appellant no.3 had assaulted him with knife. The doctor on examination of the injured had not found redness in the eyes, nor treated the eyes of the injured. The shop-keeper i.e. Atmarambhai from whose whop the appellant no.3 had allegedly brought chilli powder and thrown into the eyes of the injured, is not examined by the prosecution. Probably, the story of throwing chilli powder in the eyes of the injured is introduced by the injured to establish that on chilli powder being thrown into his eyes, the injured had bent and thereafter the appellant no.3 had caused injury on his neck. The parrot like story narrated by the injured and other witnesses becomes highly doubtful in view of the fact that the injured had not sustained any incised wound, but had sustained contused lacerated wounds which could not have been caused by a sharp cutting instrument like muddamal knife. Therefore, the prosecution case becomes highly doubtful. In fact, reading the evidence of prosecution witnesses, it becomes at once evident that the genesis of the incident is suppressed by the prosecution. Therefore, the claim made by the injured that he was assaulted by the appellant no.3 with sharp cutting instrument like knife, cannot be accepted and is liable to be rejected. In the light of this finding, the case of the prosecution against the appellants no.1 & 2 that they had abetted and instigated the appellant no.3 to assault the injured will have to be viewed. In the complaint lodged by Mohanbhai, it is specifically stated that the appellants no.1 & 2 had instigated the appellant no.3 to kill the injured. However, the injured himself has stated in his evidence that the appellant no.1 had instigated the appellant no.3 to kill him and, therefore, the appellant no.3 had assaulted him. The injured has not stated that the appellant no.2 had instigated the appellant no.3 to kill him and, therefore, the appellant no.3 had assaulted him with knife. So also, the wife of the injured i.e. Laxmiben has not stated before the Court that the appellant no.2 had instigated the appellant no.3 to assault her husband. Ofcourse, one witness i.e. Natubhai Vegda says in his evidence that the appellants no.1 & 2 had instigated the appellant no.3 to assault the injured, but the other witnesses have not stated in their respective evidence before the Court that the appellant no.2 had instigated the appellant no.3 to kill the injured. Thus, the case against the appellant no.2 does not stand satisfactorily proved even by the

evidence of the injured and other eye witnesses and his false implication cannot be ruled out. Further, witness Bhanubhai Bharvad in his evidence has stated that when the jeep was proceeding towards dipensary, the injured had told him that he was assaulted by the appellant no.3. If the appellants no.1 & 2 had addressed the injured as dheda or instigated the appellant no.3 to kill the injured, the injured would not have failed to state the said fact before Bhanubhai. Moreover, the complainant, who has deserted the prosecution, has stated that the complaint was filed by Bhanubhai. Under the circumstances, false implication of the appellants no.1 & 2 is not ruled out. When the factum of causing injuries by the appellant no.3 to the injured with knife itself becomes doubtful, it would be risky to convict the appellants no.1 & 2 for instigating the appellant no.3 to cause injuries to the injured. We notice that the incident is alleged to have taken place in chowk which is a public place. It is true that the quality of the evidence adduced by the prosecution has to be adjudged and not quantity. However, it becomes evident that except the persons belonging to scheduled caste, the prosecution has not examined other independent witnesses, whose shops were situated near the place of the incident. The interested versions of the witnesses examined by the prosecution does not get corroboration by the medical evidence on record and, therefore, in such circumstances, non-examination of the independent witnesses becomes relevant. It is not probable that when the injured had some altercation with the person who was selling mangoes with regard to price of the mangoes, the appellant no.2, who is a businessman, would come out of his shop and address the injured as dheda or intervene in the dispute going on between the injured on one hand and the seller of mangoes on the other or instigate the appellant no.3 to kill the injured. So also, there was no reason for the appellant no.1 to instigate the appellant no.3 to kill the injured. In fact, it has not been brought on record of the case that either the appellant no.1 or the appellant no.2 was on inimical terms with the injured. They were not concerned with the dispute which was going on between the injured and the mango seller. Thus, the case of the prosecution that the appellants no.1 & 2 had intervened in the dispute going on between the injured and the mango seller and had addressed the injured as dheda, becomes doubtful. Therefore, in our view, the conviction of the appellants under section 3(1)(x) of the Atrocities Act is also liable to be quashed. While dealing with the appeal filed by the appellants, we have borne in mind the well settled principle that normally an injured person would not allow the real culprit to go

scot free or involve innocent persons falsely, but in this case, we find that the medical evidence on record has made the testimony of the injured and other witnesses unreliable and, therefore, the appellant no.3 cannot be convicted on the plea that the injured normally would not allow the real culprit to go scot free or involve innocent persons falsely. In our view, the learned Special Judge has committed material error while appreciating the evidence on record and more particularly while evaluating evidenciary value of the injured with reference to medical evidence on record. Further, without framing any charge under section 3(2)(v) of the Atrocities Act or without recording any finding to the effect that the prosecution has proved beyond reasonable doubt the charge against the appellants of the offence punishable under section 3(2)(v) of the Atrocities Act, the learned Judge has convicted them under the said section and punished them with life imprisonment. On overall view of the matter, the prosecution case sounds most improbable and, therefore, it is difficult to uphold the judgment of the learned Judge and the appellants are entitled to the reasonable benefit of doubt.

For the foregoing reasons, the appeal succeeds. The conviction of the appellants under sections 3(1)(x) read with section 3(2)(v) of the Atrocities Act, 307 r.w. section 34 I.P.c. and 506(2) r.w.section 34 I.P.C. recorded by the learned Special Judge as well as the punishments imposed for commission of those offences vide judgment dated December 31, 1994 are hereby set aside and quashed. As the appellants are on bail during the pendency and hearing of the appeal, their bail bonds stand cancelled. Fine, if paid, be refunded. The muddamal is ordered to be disposed of in terms of direction given in the impugned judgment rendered by the learned Special Judge of the Trial Court.

(J.M.Panchal, J.)

(H.H.Mehta, J.)

(patel)